



- 1       **3. On August 31, 2012 Defendants Brock & Scott, Plc and Trustee Services of Carolina**  
2       **Llc, filed a Motion to Dismiss pursuant to FRCP 12 (b)(6).**
- 3       **4. On September 4, 2012 Defendant BankUnited, Inc. filed a Motion to Dismiss**  
4       **pursuant to FRCP 12 (b)(6).**
- 5       **5. On September 4, 2012 Defendants Ragsdale Liggett Plc. and Ashley H. Campbell**  
6       **filed a Motion to Dismiss pursuant FRCP 12 (b)(6).**
- 7       **6. On September 24, 2012 Plaintiffs filed a Motion for Extension of Time to respond to**  
8       **Motions to Dismiss.**
- 9       **7. On October 8, 2012 Plaintiffs timely file this Response to Def. Motion to Dismiss.**

## 12                   **II. ARGUMENTS AND AUTHORITIES**

13       **Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the**  
14       **claim showing that the pleader is entitled to relief,” in order to “give the defendant notice of**  
15       **what the...claim is and the grounds upon which it rests,” Bell Atlantic Corp. v. Twombly,**  
16       **550 U.S. 544, 555 (2007), quoting Conley v. Gibson, 355 U.S. 41, 47 (1957).**

17       **A complaint attacked by Rule 12 (b)(6) motion to dismiss does not need detailed factual**  
18       **allegations.” Id. At 555. “We do not require heightened fact pleading of specifics, but only**  
19       **enough facts to state a claim to relief that is plausible on its face.” Id. At 570.**

20       **The complaint must only include “sufficient factual allegations to provide the ground on**  
21       **which the claim rests.” Friends of Lake View School District v. Beebe, 578 F.3d 753, 762**  
22       **(8<sup>th</sup> Cir. 2009).**

23       **While “mere labels and conclusions” will not satisfy a plaintiffs burden, there is no need for**  
24       **detailed factual allegation or specific facts that describe the evidence to be presented. Id.**  
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1 A plaintiff satisfies their burden if they allege facts sufficient to allow a court to infer "more  
2 than the mere possibility of misconduct." *Ashcroft v. Iqbal*, 129 W. Ct. 1937, 1950 (2009).

3 A well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of  
4 those facts is improbable, and "that recovery is very remote and unlikely." *Twombly*, 550  
5 U.S. at 556.

6  
7 When considering Defendant's motions, the court must construe the factual allegations in  
8 the complaint in the light most favorable to the Plaintiffs. In *Re Stac Elec. Sec. Litig.*, 89 F.3d  
9 1399, 1403 (9<sup>th</sup> Cir. 1996); *Jones v. General Electric Co.*, 87 F. 3d 209, 211 (7<sup>th</sup> Cir 1996).

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12 In this present case, Plaintiffs alleged violations of the FDCPA 15 USC 1692 g (b) in that  
13 Defendants failed to cease collection efforts until the debt was validated. See Exhibit A-  
14 QWR/Debt Validation.

15 Validation requires presentment of the account and general ledger statement signed and  
16 dated by the party responsible for maintaining the account. See *Pacific Concrete F.C.U. v.*  
17 *Kauano*, 62 Haw. 334,614 P. 936 (1980), *Fooks v. Norwich Housing Authority* 28 Conn. L.  
18 Rptr. 371, (Conn. Sup. 2000).

19  
20 The Appointment of Substitute Trustee was filed on February 9, 2011 and the QWR was  
21 dated February 25, 2011, and was well within the 30 days allowed by law to dispute the debt.  
22 See Exhibit B- Appointment of Substitute Trustee.

23 Defendants BankUnited(no Creditor, not my Lender), Trustee Services of Carolina and  
24 Brock & Scott admit in letters that they're debt collectors attempting to collect a debt. See  
25 Exhibit C- BankUnited default letter and Exhibit D- Trustee Svces/Brock & Scott letter.  
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1 All Defendants violated 15 USC 1692 (f), unfair or unconscionable means to collect or  
2 attempt to collect the alleged debt, in that, they produced 6 months after starting the  
3 foreclosure proceedings, an Assignment of the Note and Deed of Trust, thereby proving that  
4 the debt was in default when the Assignment was obtained on August 22, 2012, and also  
5 proving that the bank lacked standing at the commencement of foreclosure and at the  
6 hearing with the County Court Clerk. See Exhibit E- Assignment.

8 Defendants violated 15 USC 1692 e(2), in that they falsely represented the character,  
9 amount or legal status of the debt, by not answering the QWR in a responsible way, and  
10 fixing any errors, Plaintiff had to pay hundreds of dollars for a forensic audit that showed  
11 thousands of dollars difference in the finance charge total, when as per T.I.L.A. laws there  
12 should be a difference of no more than \$35. See Exhibit F- Consumer Audit.

14 Defendants BankUnited and Trustee Services of Carolina Llc violated the N.C. Unfair Trade  
15 Practices Act by their unfair and deceptive acts and practices pursuant to NCGS 75 1.1, in  
16 that their reckless and without disregard conduct, was a material fact by convincing the  
17 Clerk of County Court and the Superior Court Judge to proceed with the foreclosure of  
18 Plaintiff's home, against N.C. General statute 45-21.16(d), when they lacked standing in the  
19 proceedings, showing an Assignment done 6 months after commencement.

21 That caused Plaintiffs mental anguish, marital problems, emotional distress, and other  
22 damages in an amount proven at trial by the jury.

24 Another example of violations of USC 1692 f and NCGS 75 1.1, is the reckless and  
25 irresponsible way of handling this foreclosure, is in that is clearly seen that the person that  
26 did the Affidavit of Debt, Foreclosure Analyst Cesar Romero, is without doubt BankUnited's  
27 in-house ROBO-SIGNER BECAUSE HIS HANDWRITING IS ALL OVER the  
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1 Appointment of Substitute Trustee, showing a definite issue of not trusting that the signature  
2 of Tim Reilly is his real signature in both, the Appointment of Substitute Trustee and his  
3 signature in the Assignment of Note and Deed of Trust.

4 They're definitely two different signatures! See Exhibit G- Affidavit of Debt

5 That can be explained very easily: Senior V.P. Tim Reilly lives in Jacksonville, Fla., 400  
6 miles away from Miami, Fla, where Cesar Romero signed for him. See Exhibit H- Tim Reilly  
7 Linkedin and Exhibit I- Cesar Romero Linkedin.

8 While the Court is not necessarily bound to accept the Plaintiffs descriptions as true relating  
9 to the Defendants, (Iqbal, 556 U.S. at 678), the Court should follow more lenient guidelines  
10 at this starting juncture of the proceedings in light of the Plaintiffs Pro Se status and the  
11 Court must hold them to a less stringent standard than formal pleadings drafted by an  
12 attorney and construe liberally. See Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 596,  
13 30 L.Ed. 2d 652 (1972).

14 The Court should grant the Plaintiffs leave to amend to correct any obvious deficiencies.

15 In this case Plaintiffs have stated facts that would indicate that there is enough reason to  
16 pursue the production of further evidence through discovery that would justify the Plaintiffs  
17 claim of Defendants having several violations of the law.

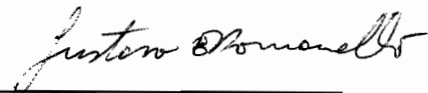
18 The Supreme Court in Haines v. Kerner recognized the fact that pro se litigants are not  
19 trained to the same standard as Bar licensed attorneys.

20 The Court should allow Plaintiff to amend their complaint to correct deficiencies so that  
21 justice may be properly served for ALL parties to the action." Because the FDCPA, like the  
22 Truth in Lending Act, is a remedial statute, it should be construed liberally in favor of the  
23 consumer", Johnson v. Riddle, 305 F.3d 1107, 1117 (10<sup>th</sup> Cir. 2002).  
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1 It is paramount that this ability of the pro se litigant to have some leniency from the Court  
2 be preserved to foster justice and follow through on the intent of Congress, especially now  
3 with the incredible proliferation of blatant fraud in the mortgage industry that's been  
4 documented and exposed nationwide, being perpetrated on the consumers of America by the  
5 bankers and debt collectors through their oftentimes unconscionable behavior and tactics.  
6 Plaintiff make a request at the present time in this answer to Motion to Dismiss, that if the  
7 court found that they failed to state a claim, that they be given leave of court to file an  
8 amended pleading and allow their cause of action to go forward on the merits.  
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12 WHEREFORE, the Plaintiffs respectfully request that this Honorable Court deny the  
13 Defendants motion to dismiss and to grant them leave to amend their complaint to correct  
14 any deficiencies so justice may properly be served.  
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16 Respectfully submitted,  
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18   
19 \_\_\_\_\_  
20 Acela Romanello  
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22 **CERTIFICATE OF SERVICE**  
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25 The undersigned hereby certify that on October 8<sup>th</sup>, 2012, a copy of the foregoing Plaintiffs  
26 Response to Defendants Motion to Dismiss was served upon all parties to this action as  
27 follows:  
28

1 Sean T. Partrick

2 YATES McLAMB & WEYHER, LLP

3 421 Fayetteville St., ste. 1200

4 Raleigh, NC 27610

5 Counsel for BankUnited, Inc

8 Travis E. Menk

9 5121 Parkway Plaza Blvd., ste. 300

10 Counsel for Brock & Scott, Plc and

11 Trustee Services of Carolina, Llc

14 J. Whitfield Gibson Robert S. Shields

15 MANNING FULTON & SKINNER, P.A.

16 3605 Glenwood Ave. ste 500

17 Raleigh, NC 27612

18 Counsels for Ragsdale Liggett, PLLC

21 This October 8<sup>th</sup>, 2012

22 

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